SILVERMAN, Circuit Judge, dissenting:

I respectfully dissent. Rhead alleged in paragraphs nine and ten of his complaint as follows: He gave a sarcastic answer to Officer Hart. Hart and other officers responded by forcefully taking Rhead to the ground, beating him with flashlights and clubs, spraying him in the eyes with pepper spray, and painfully applying nunchakus to his arm. The beating culminated in his being handcuffed and placed in the police car. As alleged by Rhead himself, this was one continuous event without any break in the action. *See Cunningham v. Gates*, 312 F.3d 1148, 1154-55 (9th Cir. 2002). Under California law, Rhead's conviction for violating California Penal Code § 148 necessarily established the lawfulness of the officers' conduct. *Susag v. City of Lake Forest*, 115 Cal. Rptr. 269, 273 (Cal.App. 2002) Therefore, a judgment in favor of Rhead in this civil case would necessarily imply the invalidity of the conviction. For that reason, the lawsuit is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

It does not matter that the state court judge advised (or even misadvised) Rhead about the availability of civil remedies against the officers. If the judge misled him about the effect of a no contest plea, Rhead might have grounds to withdraw his plea and go to trial. However, in no event is the state court judge

empowered to overrule the United States Supreme Court's decision in *Heck*.

I would affirm the district court.